IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1457 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHSANA DISTRICT PANCHAYAT

Versus

MANUJI HAMIRJI CHAUHAN

Appearance:

1. Special Civil Application No. 1457 of 2003

MR HS MUNSHAW for Petitioner No. 1

MR PUSHPADATTA VYAS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.0 The petitioner-Panchayat by way of this petition has challenged the judgment and award dated 26th August,

2002 passed by the Labour Court, Kalol, in Reference L.C.K. no.433 of 1990 whereby the Labour Court has partly allowed the Reference, and has directed to reinstate the respondent-workman with 50% back wages and to pay costs of Rs.500/-.

2.0 The facts of the case are that the respondent-workman was initially appointed as a part time daily wager peon with effect from 24th June, 1987 and was posted at Sudasana Primary Health Centre as one sanctioned post of Peon was lying vacant. His appointment came to be made after obtaining necessary permission from the District Health Officer and was extended from time to time as per document produced at Annexure "A" to the petition. Subsequently, on 11th July, 1990 a regularly selected candidate Mr. Atmaram Parmar came to be appointed and the petitionerPanchyat had discontinued the services of the respondent-workman on the ground of non availability of work.

3.0 Mr. Munshaw, learned Counsel appearing for the petitioner has contended that the Labour Court has not considered the contentions raised on behalf of the petitioner and without considering the evidence on record granted reinstatement with continuity of service and 50% back wages.

4.0 Mr. Vyas, learned Counsel appearing for the respondent has contended that the Labour Court has considered the evidence and the documents produced by the petitioner-Panchayat and the order of reinstatement is passed keeping in mind the provisions of the Industrial Disputes Act. Mr. Vyas further contended that the Labour Court has rightly rejected the contentions raised by the petitioner-Panchyat as the petitioner-Panchayat has not followed the procedure as required under Section 25F of the Industrial Disputes Act,

5.0 Having given my anxious thought and consideration to the evidence on record as also the arguments advanced by both the parties, I am of the view that looking to the fact that the respondent-workman was appointed on 24th July, 1987 and had worked for almost three years, it will be in the fitness of things if the petitioner-Panchayat is directed to absorb the respondent-workman initially as a daily-wager and as and when vacacy arises his services may be regularized giving him continuity of service but not back wages.

6.0 In the result, the petition is partly allowed. The order of the Labour Court is modified to the extent

that the respondent workman shall be reinstated in service by absorbing him initially as a daily wager and thereafter regularizing him on the post giving continuity of service but not back wages. The order of back wages as also the costs is quashed and set aside. Rule is made absolute accordingly.

(K.S.Jhaveri,J.)

stanley-ksj.